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State v. Ruggiero Appellant's Brief Dckt. 43726

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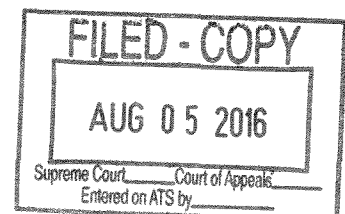
IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Supreme Court No. 43726
Plaintiff-Respondent)	
)	
vs.)	
)	
PHILLIP MILTON RUGGIERO,)	
)	
Defendant-Appellant.)	
)	

APPELLANT'S BRIEF

**Appeal from the District Court of the
Fourth Judicial District of the State of Idaho,
in and for the County of Ada**

HONORABLE DEBORAH BAIL, District Judge



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STATEMENT OF THE CASE

a) Nature of the Case

This is a direct appeal by the Defendant in a criminal case from a conviction and sentence under Idaho Code § 18-2601: Falsifying Evidence by Offering Forged or Fraudulent Documents into Evidence. The case presents questions of the admissibility of evidence offered by the State; in particular, the testimony regarding a prior stalking charge and the admission of the purportedly forged letters themselves into evidence without proper foundation.

b) Course of Proceedings

A Complaint was filed with Ada County Court on February 13, 2012, charging Phillip Ruggiero with three counts of Offering False or Forged Instrument for Record under Idaho Code § 18-3203. Clerk's Record, p. 3. On April 13, 2012, the charges were amended to three counts of Falsifying Evidence by Offering Forged or Fraudulent Documents in Evidence under I.C. § 18-2601 and a Preliminary Hearing was held. *Id.* On April 30, 2012, the Defendant entered a plea of Not Guilty to the charges. *Id.* at 4. On June 4, 2012, the Defendant filed a Motion to Dismiss the case for a lack of probable cause, alleging there was not substantial evidence presented at the Preliminary Hearing that the Defendant committed the crime for which he has been held to answer. *Id.* After subsequent hearings on the Motion to Dismiss, the Honorable Judge Deborah Bail of the District Court of Idaho for the Fourth Judicial District granted the Motion to Dismiss. *Id.* at 5. After the case was dismissed on July 16, 2012, the State appealed the dismissal to the Idaho Supreme Court. *Id.* On August 27, 2014, the Supreme Court reversed and remitted the case for further proceedings. *Id.*

At the Jury Trial on June 30, 2015, the Defendant made a Motion in Limine to prevent irrelevant testimony regarding a prior charge from being offered into evidence. Jury Trial Transcript, p. 99, ll. 20-25. Further objections were made when letters supposedly written by the Defendant were admitted into evidence without proper authentication. *Id.* at p. 99, ll. 20-25; p. 133, ll. 1-3, p. 169, ll. 17-19. At the conclusion of the two-day trial, the Defendant was found guilty under I18-2601. The Appellant now appeals from that decision.

c) Statement of Facts

On September 29, 2011, October 12, 2011, and October 18, 2011, the Ada County Courthouse received letters addressed to the Honorable Judge Thomas Watkins. *See* Jury Trial Transcript, p. 24, ll 3-25. The three letters were assumed to be written by Mr. Ruggiero between the months of September and October. *Id.* Each of the letters referenced the case number to a prior proceeding and requested in some manner that the criminal charges be dropped. *Id.* One letter was signed via typewriter, “Lisa Roggenbuck”, one “Spearmint Rhino Bouncer,” and the third “Jenn Higginson.” *Id.* at 24-26. The State sought to prove the current violation, which states, “Every person who, upon any trial, proceeding, inquiry or investigation...offers in evidence as genuine or true, any...instrument in writing, knowing the same to have been forged...is guilty of a felony.” I.C. § 18-2601. In order to prove that the letters in question were offered upon an official proceeding, the State introduced details of the previous case, where the Defendant had been charged by the City of Boise with stalking, although he plead guilty to the amended charge of Disturbing the Peace on November 17, 2011. *See* Jury Trial Transcript, p. 105, ll. 8-23.

On the day of negotiations regarding the amendment of the stalking charge, during a Pretrial Conference, Judge Watkins, who was the assigned judge on the stalking case, alerted the prosecutor, Christine Starr that he had received three letters regarding the matter at hand. *See PSI*, pp. 61-63. Even though the Prosecutor suspected the letters were fraudulent, she still agreed to reduce the stalking charge to disturbing the peace. *Id.* Ms. Starr then forwarded the letters to the Ada County Prosecutor's office. *Id.*

Mr. Ruggiero was subsequently charged with the three violations and the case went to Jury Trial. During the trial, Christine Starr, the prosecutor on the stalking case, Judge Thomas Watkins, the judge on the stalking case, and Lisa Roggenbuck, the alleged victim in the stalking case, each testified and not only named the prior offense, but also gave extensive details regarding the facts surrounding the past misconduct. *See* Jury Trial Transcript, p. 118, ll. 13-14; *Id.* at p. 136, ll. 7-9; *See, e.g.* Jury Trial Transcript, p. 170, ll. 5-22. For example, during trial, Ms. Starr testified that the case she prosecuted in the past was, "a stalking in the second degree case." Jury Trial Transcript, p. 118, ll. 13-14. She then proceeded to give even more detail when she stated, "I absolutely had concerns because I had met with Lisa, and I was very clear about how she felt at the time we met, and her fears and her position." *Id.* at p. 122, ll. 18-22.

Afterward, the prosecution called Judge Watkins to the stand. *Id.* at p. 134, ll. 17-20. Again, the stalking charge was named when he stated, "It was a criminal case. I believe the original charge was second degree stalking, which is a misdemeanor." *Id.* at p. 136, ll. 7-9. He later detailed for the jury, "I mean, the underlying case had to do with a gentlemen's club,

purported goings on during the course of that. It was a little Jerry Springer-ish, kind of a little out of the ordinary that way.” *Id.* at p.141, ll. 1-4.

Lisa Roggenbuck took the stand next. *Id.* at p.167, ll. 3-6. She, too, provided the jury with inflammatory testimony regarding the prior stalking offense. *See e.g.*, Jury Trial Transcript, pp. 168-170. She detailed that Mr. Ruggiero’s conduct toward her changed “quite quickly” and claimed, “[h]e started to think that we had a relationship together, and to think that we were going to get married.” *Id.* at p. 170, ll. 12-14. The testimony continued with, “[I filed a police report] on the day that he told me he had my license plate memorized, which he recited to me, described the clothes that I was wearing.” *Id.* at p. 170, ll. 19-22. Despite constant objections from Mr. Ruggiero and an offer to stipulate to the fact that a prior proceeding existed, testimony similar to this continued throughout the trial. *See* Jury Trial Transcript, p. 99, ll. 20-25; p. 133, ll. 1-3, p. 169, ll. 17-19; p. 170, ll. 23-25 (objecting for prejudicial effect and offering to stipulate).

This is an appeal from the admission of prejudicial testimony into evidence without any balancing test having been conducted to weigh the probative value, despite renewed objections from the Defendant. It is also an appeal from the admission of the letters themselves into evidence without prior foundation at jury trial.

ISSUES PRESENTED ON APPEAL

- I. Did the trial court err in allowing witnesses for the prosecution to testify regarding past charges without performing the required balancing test to determine relevance and prejudicial effect?
- II. Did the trial court err in admitting letters into evidence without authentication to support a finding that the letters are what the state claimed them to be?

STANDARD OF REVIEW

An appeal regarding the admissibility of evidence uses a mixed standard of review. *State v. Stevens*, 146 Idaho 139, 143, 191 P.3d 217, 221 (2008). First, whether the evidence is relevant is a matter of law that is reviewed *de novo*. *State v. Raudebaugh*, 124 Idaho 758, 762, 864 P.2d 596, 600 (1993). Second, the requirement that the court address whether the probative value of the evidence outweighs its prejudicial effect is reviewed for abuse of discretion. *Stevens*, 146 Idaho at 143, 191 P.3d at 221. A trial court's determination that evidence is supported by a proper foundation or authentication is also reviewed for an abuse of discretion. *State v. Thompson*, 132 Idaho 628, 634, 977 P.2d 890, 896 (1999)(explaining that appellate courts review trial court decisions admitting or excluding evidence under the abuse of discretion standard).

ARGUMENT

The trial court improperly admitted witness testimony regarding a prior stalking charge because the admission of such evidence unduly prejudiced Mr. Ruggiero. Not only was such testimony irrelevant, but any probative value to the prosecution was outweighed by its prejudicial effect. Further, the trial court abused its discretion when it completely failed to conduct the I.R.E. 403 balancing test before choosing to admit or exclude the testimony.

Additionally, the trial court erred in admitting letters into evidence over the objection by Mr. Ruggiero that there was no proper foundation laid for authentication. This improper admission violated I.R.E. 901(a).

- I. Admitting detailed testimony regarding Mr. Ruggiero's past stalking charge violated the applicable legal standards required by I.R.E. 404(b).**

The trial court erred in admitting thorough and persistent testimony of a prior charge, even though the name and nature of the past offense created a risk of a verdict influenced by prejudicial considerations.

The Rules of Evidence typically govern the admission of *all evidence* in the courts of Idaho. *State v. Ruiz*, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010)(quoting *State v. Meister*, 148 Idaho 236, 240, 220 P.3d 1055, 1059 (2009))(emphasis in original). I.R.E. 404(b) provides that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show that the person acted in conformity therewith.” I.R.E. 404(b). Prior conviction evidence, in particular, often brings a uniquely significant danger of unfair prejudice toward a Defendant. *Old Chief v. United States*, 117 S.Ct. 644, 654, 519 U.S. 172, 188 (1997). This danger is heightened when a Defendant is willing to stipulate or admit to a record of conviction. *Id* at 655, 519 U.S. at 191. When determining the admissibility of evidence when an I.R.E. 404(b) objection has been made, the trial court must conduct a balancing test to consider (1) whether the past acts are relevant to a material and disputed issue in the case and (2) whether the probative value is substantially outweighed by the danger of unfair prejudice. *State v. Grist*, 147 Idaho 49, 52, 205 P.3d 1185, 1188 (2009). Pursuant to I.R.E. 403, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” I.R.E. 403. Specifically, the Idaho Supreme Court has routinely held that the trial court’s decision to admit or exclude evidence without conducting Rule 403’s analysis is an abuse of discretion. *Ruiz*, 150 Idaho at 471, 248 P.3d at 722. *See also Grist*, 147

Idaho at 52, 205 P.3d at 1188; *State v. Sheahan*, 139 Idaho 267, 275, 77 P.3d 956, 964 (2003).

Evidence of the prior stalking charge was inadmissible for the foregoing reasons.

A. The testimony regarding prior stalking charges was not admissible because it was not relevant as it pertains to the charged offense.

Evidence of a Defendant's previous misconduct is inadmissible unless it is relevant to the charged offense. *State v. Joy*, 155 Idaho 1, 9, 304 P.3d 276, 284 (2013). Evidence is relevant only if it has the tendency to make the existence of a fact of consequence to the determination of the action more probable or less probable than it would be without the admission of the evidence. I.R.E. 401; *State v. Stevens*, 146 Idaho 139, 143, 191 P.3d 217, 221 (2008). Thus, under I.R.E. 404(b), evidence of prior misconduct may only be admitted if "relevant to prove...a common scheme or plan embracing the commission of two or more crimes so *related to each other* that proof of one tends to establish the other, knowledge, identity, or absence of mistake or accident." *State v. Johnson*, 148 Idaho 664, 668, 227 P.3d 918, 922 (2010) (emphasis in original) (quoting *Grist*, 147 Idaho at 54-55, 205 P.3d at 1190-91). This means that evidence of prior misconduct must show that it is so strongly linked to the charged conduct that it permits the inference that the past misconduct was planned as part of a course of conduct leading up to the current offense. *Joy*, 155 Idaho at 10, 304 P.3d at 285.

The likelihood of prior misconduct being deemed relevant may be lessened when the alleged prior misconduct does not result in a conviction and does not demonstrate more than mere similarity to the case at hand. *See Grist*, 147 Idaho at 51, 205 P.3d at 1187. For example, in *State v. Pokorney*, when determining the relevance of evidence regarding a prior bad act, the

court stated that before the testimony could be admitted, there must be sufficient evidence to establish the prior bad acts as *fact*. 149 Idaho 459, 462, 235 P.3d 409, 412 (Ct. App. 2010)(emphasis added). Similarly, in *Grist*, the Court reasoned that evidence of uncharged misconduct is only relevant if the jury is able to adequately conclude that the act occurred and that the defendant was the actor. 147 Idaho at 52, 205 P.3d at 1188. In that case, the Court held that testimony offered regarding the Defendant's prior, uncharged sexual misconduct with a minor needed to be more heavily scrutinized for admissibility and that there must be limits to the use of prior misconduct evidence. *Id.* at 53, 205 P.3d at 1189. In *State v. Fisher*, the Court held that evidence regarding the Defendant's physical abuse of his current stepchildren was not relevant in proving that the Defendant committed the charged act of child molestation. 165 Wash. 2d 727, 750, 202 P.3d 937, 949 (2009). The Court in that case reasoned that since the Defendant was not charged with physical abuse, such evidence robbed the Defendant of his right to a fair trial. *Id.* at 756, 202 P.3d at 952.

Courts have also found that providing evidence of a prior conviction when an admission to that conviction was available or offered is an abuse of discretion. *Old Chief*, 117 S.Ct. at 655, 519 U.S. at 191. In *Old Chief*, the Court held that it was an abuse of discretion to admit record of a prior judgment, when the name and nature of that charge created the risk of a judgment "tainted by improper considerations." *Id.* at 647, 519 U.S. at 174. In that case, the Court allowed full record of a prior assault conviction to be admitted, over renewed objection, in order to prove felony status for a gun charge. *Id.* at 648, 519 U.S. at 177. The Court reasoned that

the Defendant's willingness to stipulate to the fact that there was a prior felony conviction removed the necessity to name and give details of the prior offense. *Id.* at 653, 519 U.S. at 186.

The trial court's decision to allow testimony of Mr. Ruggiero's past misconduct into evidence violated the Idaho Rules of Evidence, since testimony regarding a prior stalking charge is not relevant to the currently charged offense. Just like the prior misconduct in *Pokorney*, the prosecution failed to establish the past stalking charge as fact. Not only was the prior stalking charge reduced to disturbing the peace, but also, a stalking charge does not bear any similarity to the case at hand. Like the Court reasoned in *Grist*, a higher level of scrutiny should be required prior to admitting testimony of an uncharged offense. The prior misconduct in our case is similar to an uncharged offense, since Mr. Ruggiero was never convicted of stalking, but only convicted of disturbing the peace. Further, the court in our case failed to scrutinize the admissibility of such testimony at all, despite several objections on behalf of Mr. Ruggiero. In *Fisher*, the court felt that evidence of prior physical abuse was irrelevant to help prove child molestation, since the Defendant was not being charged with physical abuse. Similarly, in our case, Mr. Ruggiero was not being charged with stalking; thus, admitting constant testimony, including details, was much like retrying a case that had already been settled. The evidence offered was irrelevant to prove the current charge of offering false instrument for record.

Further, the Court erred by admitting evidence of the past stalking charge, since Mr. Ruggiero repeatedly offered to stipulate to the fact that there existed a past proceeding; which was an element the prosecution needed to prove. Our case is most analogous to *Old Chief*, with respect to the offer to stipulate or admit a necessary element of the prosecution's case. If the

name and details of a prior assault charge were found to cause improper considerations with respect to the jury in an illegal weapon case, so should the name and nature of a charge as sensitive as stalking, offered to prove false instrument for record. Just like naming an assault charge despite a willingness to stipulate to a prior felony, allowing a prior stalking charge to be named deprived Mr. Ruggiero of an impartial jury. Naming the prior charge, exacerbated by constant details about the past misconduct, no doubt lacked relevance to the case at hand. Accordingly, the testimony of the past stalking charge was irrelevant and should not have been allowed into evidence.

B. Even if the testimony regarding past charges was relevant, its prejudicial effect outweighed any probative value.

Allowing detailed testimony about a prior conviction has the potential to lure the jury into declaring fault on grounds unrelated to the matter at hand. *E.g., Robinson v. Taylor*, 356 P.3d 1230, 1238 (Utah 2015). Further, although evidence might be relevant, it must be excluded if the trial court erroneously balanced the probative value against the prejudicial effect, resulting in a great danger that the jury may believe prior misconduct demonstrates deviant character traits. *Pokorney*, 149 Idaho at 466, 235 P.3d at 416. For example, in *Pokorney*, the Court held that although witness testimony and a letter written by the Defendant were relevant evidence of a prior bad act and showed consciousness of guilt; the unfair prejudice to the Defendant substantially outweighed the probative value. *Id.* Both pieces of evidence highly favored the prosecution and went into great detail regarding the Defendant's sexual proclivity, thus, both were admitted in error, despite objections from the Defendant. *Id.*

Also, in *Old Chief*, the Court found that details, including the name and general character of a past crime ought not be disclosed when the fact of a qualifying conviction is all that is relevant. 117 S.Ct. at 655, 519 U.S. at 190. The Court in that case claimed that, “[t]he most the jury needs to know is that the conviction admitted by the defendant falls within the class of crimes” that qualify an individual as a felon possessing a gun. *Id.* at 655, 519 U.S. at 190-191. The Court further stated, “[i]n this case, as in any other in which the prior conviction is for an offense likely to support conviction on some improper ground, the only reasonable conclusion was that the risk of unfair prejudice did substantially outweigh the discounted probative value of the record of conviction.” *Id.*

The opposite was true in *State v. Cardell*, when testimony regarding the Defendant’s prior sexual misconduct with his massage clients was deemed not so prejudicial as to outweigh the probative value. 132 Idaho 217, 220, 970 P.2d 10, 13 (1998). In that case, the Court reasoned that since the testimony was only allowed in during the State’s rebuttal, after the defendant had testified that he had never touched any massage clients sexually, it was only offered to prove that the defendant performed the same therapy on all clients. *Id.*

Providing the jury with the name and details of Mr. Ruggiero’s past stalking charge unfairly prejudiced Mr. Ruggiero. As was the case in *Pokorney*, testimony was admitted in our case that can not be said to have been so informational that its prejudicial effect could be overlooked. While it is likely that many types of evidence pose a risk of unfair prejudice, here, as was the case in *Pokorney*, it is possible that the prejudicial effect was so great that the jury might have based its decision to convict Mr. Ruggiero on the imagery that the detailed testimony

provided. The extensive details of stalking the testimony in our case provided likely created a depiction that Mr. Ruggiero should be punished, regardless of his alleged accountability in this particular case.

Additionally, no one can reasonably dispute that providing the jury with the name and nature of Mr. Ruggiero's previous stalking charges is not inherently prejudicial. While it can be said that the name and nature of prior misconduct might be relevant in a criminal proceeding, where there exists a significant risk that the jury will declare guilt based on prior misconduct, that evidence must be excluded, as it is unduly prejudicial. Just like the Court in *Old Chief* stated, in order to reduce the risk of unfair prejudice, the name and nature of a past crime ought not be disclosed when the details are irrelevant. As the fact of a qualifying conviction was all that was relevant in *Old Chief*, all that was relevant in our case was that there existed a past proceeding, or inquiry authorized by law. Despite Mr. Ruggiero's willingness to stipulate to this fact, just like the defendant in *Old Chief*, the Court allowed in several instances naming and/or providing details of the previous stalking case, resulting in an unfair prejudice.

While in *Cardell*, testimony offered only after the Defendant claimed that he had never previously touched a client sexually was deemed not unfairly prejudicial; no such claims were made in our case. Here, the uninvited testimony was offered prior to any claims to the contrary and despite a willingness to stipulate to the only relevant information. Thus, it follows that unlike *Cardell*, the testimony in our case was so prejudicial that it did not outweigh its probative value.

C. The trial court erred by failing to conduct a Rule 403 analysis prior to admitting into evidence the testimony of witnesses regarding past stalking charges.

The Idaho Supreme Court has held that a trial court abuses its discretion when it fails to conduct the I.R.E. 403 balancing test prior to admitting or excluding evidence. *State v. Parker*, 157 Idaho 132, 139, 334 P.3d 806, 813 (2014) (citing *Ruiz*, 150 Idaho at 471, 248 P.3d at 721-22). For instance, in *Parker*, the Court found that a trial court is required to address “whether the probative value is substantially outweighed by one of the considerations listed” in I.R.E. 403. 157 Idaho at 139, 334 P.3d at 813 (citing *Ruiz*, 150 Idaho at 471, 248 P.3d at 722). Failure to do so is an abuse of discretion because the court has failed to act consistently within the applicable legal standards. *Id.* The same was true in *Ruiz*, when the trial court failed to fulfill its duty to weigh the probative value of evidence regarding minimum mandatory sentencing. 150 Idaho at 471, 248 P.3d at 722. In that case, the Court recognized that the trial court abused its discretion by merely stating, “[y]ou can’t talk about minimum mandatories.” *Id.* Following the Defendant’s objection, the trial court excluded the evidence without conducting the analysis required by I.R.E. 403; thus, the Court held that the trial court erred and the judgment was vacated. *Id.*

However, the opposite was true in *State v. Ehrlick*, when the Court held that the trial court correctly upheld their duty to weigh the probative value of the I.R.E. evidence against the danger of unfair prejudice for the Defendant. 158 Idaho 900, 915, 354 P.3d 462, 478 (2015). There, the trial court noted that past behavior, such as choking, hitting, and showing a lack of remorse for sadistic behavior was probative of the defendant’s intent to inflict suffering, which was relevant in a murder charge. *Id.* at 915-916, 354 P.3d at 478-79. The Court further reasoned

that the trial court had engaged in “extensive discussion about the probative value of the evidence and whether it was unduly prejudicial. *Id.*

The trial court abused its discretion when it failed to conduct a balancing test to determine whether the evidence of Mr. Ruggiero’s past stalking charge had a prejudicial effect that outweighed its probative value. As stated in *Parker*, once an objection has been made, the balancing test must be performed. No such test was performed in our case. Just like the court in *Ruiz*, which only made a statement in passing about the admissibility of testimony, in our case, upon objection to details about the prior charge, the court simply stated, “Well, because the nature of the charge is that there was preparation of false evidence for a proceeding, then it is relevant and admissible to discuss that there was a proceeding.” Jury Trial Transcript, p. 169, ll. 20-23. The court subsequently allowed the detailed testimony into evidence.

Unlike the Court in *Ehrlick*, which engaged in extensive discussion regarding the admissibility of prior misconduct evidence, the Court in our case failed to probe further than simply stating that the evidence might be relevant, completely failing to balance the probative value against the prejudicial effect. Thus, it follows that the Court should hold that the trial court failed to perform its duty under the Idaho Rules of Evidence.

II. Admitting unauthenticated letters into evidence violated I.R.E. 901(a), resulting in unfair prejudice to Mr. Ruggiero.

The trial court erroneously admitted letters purportedly written by Mr. Ruggiero into evidence, since the letters had not been authenticated and lacked proper foundation. Idaho Rules of Evidence 901(a) provides that the requirement of authentication or identification as a

condition precedent to admissibility can only be satisfied by evidence sufficient to support a finding that the evidence in question is what the proponent claims. *State v. Chacon*, 145 Idaho 814, 817, 186 P.3d 670, 673 (Ct. App. 2008). The rule provides a list of example methods sufficient to authenticate a document; however, authentication by circumstantial evidence is permissible, though courts have disagreed as to what circumstantial evidence is adequate. *Id.*; See also *State v. Silverson*, 130 Idaho 283, 285, 939 P.2d 859, 861 (Ct. App. 1997). In *Silverson*, the court found that the State's methods of authenticating handwritten progress notes and physician invoices, offered to prove false claims for services not actually provided, did not satisfy any of the subparts of I.R.E. 901(b). 130 Idaho at 285, 939 P.2d at 861. In that case, the state presented testimony from its investigator that he recognized the Defendant's signature on the documents, but it failed to offer any evidence that the investigator's familiarity with the signature was acquired outside of litigation purposes. *Id.* However, since the documents were created under an official duty to maintain records of services, they could be authenticated under I.R.E. 901(b)(7). *Id.* at 286, 939 P.2d at 862.

Additionally, the court in *Chacon* held that the state offered convincing enough circumstantial evidence to substantiate the claim that a handwritten note was written by the defendant and was correctly allowed into evidence. 145 Idaho at 817, 186 P.3d at 673. In that case, the State's offer of proof included testimony from officers employed at the jail where the letter was allegedly written and passed to its intended recipient, a map demonstrating the layout of the jail, and an officer who read the note aloud to the court, stopping constantly to eliminate other possible authors of the note based on its contents. *Id.*

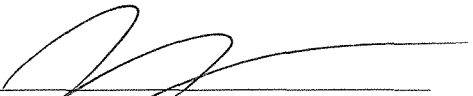
The letters purportedly written by Mr. Ruggiero lacked proper foundation and were erroneously admitted into evidence. Unlike in *Silverson*, the letters in our case did not contain a signature, nor were they created under an official duty to maintain records of service. Further, in *Silverson*, though it was deemed unsatisfactory, testimony had been offered to authenticate all documents in question. In our case, the only individual who was able to offer any sort of substantiation was Kristy Woody, who claimed she purchased perfume for Mr. Ruggiero to spray on one of the allegedly forged letters. She admitted to not having seen Mr. Ruggiero typing the letters or sending the letters, nor did she actually aid in spraying the letters. Additionally, Ms. Woody claims to only have actually even seen one out of three letters supposedly written by Mr. Ruggiero.

In *Chacon*, letters were authenticated based on significant circumstantial evidence to substantiate the claim that they were written by the defendant in that case. In contrast, here very little evidence was offered and none was expert. For example, in our case, evidence offered to authenticate the letters as being written by Mr. Ruggiero included testimony from Lisa Roggenbuck stating she did not write one of the three letters, testimony from the prosecutor on the past stalking case, Christine Starr, claiming she “had a feeling” that Mr. Ruggiero wrote the letters, and the detective on the past stalking case, Angela Munson, claiming all three letters had similar qualities. Unlike in *Chacon*, no witnesses were able to go through the note and explain why they believed it to be written by Mr. Ruggiero. It follows that the Court should find that the state failed to offer convincing enough circumstantial evidence to substantiate the claim that the letters were actually written by Mr. Ruggiero and properly authenticated under I.R.E. 901.

CONCLUSION

For the foregoing reasons, Mr. Ruggiero respectfully requests that this Court reverse his conviction or, in the alternative, reverse and remand the matter for a new trial.

DATED this 5th day of August, 2016.

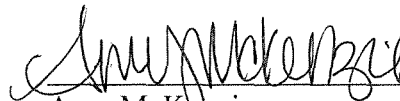

Jessica B. Bublitz
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, Id 83720-0010
Fax: (208) 854-8074

- ☐ Hand Delivery
- ☒ U.S. Mail
- ☐ Overnight Courier
- ☐ Facsimile Transmission



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